

2015. (35:23-35:48) But on November 2, 2015, the Claimant contacted the office manager, Ms. Gardner, to tell her that she (Ms. Rickart) could no longer work Thursdays. (36:00-36:06; 43:34-43:58) The Employer had several conversations with the Claimant trying to get her to return to her original hours, but the Claimant declined.

On November 23, 2015, the Employer called the Claimant to inform her that she found an employee who could work the areas and the time the Claimant could no longer work. (30:14-30:34) The Employer then offered the Claimant alternative times as a substitute in other areas at the same hours and pay to which the Claimant refused. (17:32-17:53; 30:37-30:55; 37:33-37:47; 44:36; 48:29-49:37) The Employer then offered the Claimant to return to her original hours in the same area at the same pay, which the Employer had raised numerous times after the summer, to which Ms. Rickart also refused. (31:00-31:07; 31:40-32:08; 44:06-44:34) The Claimant quit rather than accept either offer of work. (30:00-30:07; 49:37-49:50; 50:13-50:28) Continued work was available had the Claimant chosen one of the options.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2013) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. Both parties agree that the Claimant's original contract of hire was part-time from Monday through Thursday, working from 4:00 p.m. until 9:00 p.m. Both parties agree that sometime in May the Claimant requested to have her hours cut, i.e., no work on Thursdays due to personal obligations. The Employer accommodated her request with the understanding that it was only for a limited time – the summer.

When Ms. Rickart was told at the end of the summer that she would resume her original schedule in October, she expressed no surprise as if there had been a misunderstanding. Rather, she gave numerous excuses why she couldn't return to Thursdays, as was agreed. Although the Claimant argues that she didn't specify for the summer only, we find her testimony vague, at best. Ms. Rickart's testimony regarding her

attempt to initially postpone returning until after her November vacation can reasonably be inferred as her corroboration and acknowledgement that her initial request was, in fact, agreed to be temporary. If not, why then did she not question the Employer's expectation for her to return to work on Thursdays at all?

The Claimant's continuous refusal to return to Thursdays after repeated requests left the Employer no choice but to hire another employee who could fulfill the terms of the Claimant's prior contract. And even with the Employer's attempting to work with the Claimant by providing alternative employment options, the Claimant still chose not to take advantage of either one.

871 IAC 24.1(113) "b" provides:

A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

Based on this record, it is clear that Ms. Rickart chose to sever her employment relationship rather than accept work on Thursdays, or any other option offered to her. The Employer tried to maintain her employment, but was unable to do so on her terms. Her decision to quit was her own choice and cannot be attributable to the Employer under the circumstances. For this reason, we conclude that the Claimant has failed to satisfy her burden of proving that she is qualified to receive unemployment benefits.

DECISION:

The administrative law judge's decision dated January 20, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit her employment without good cause attributable to the Employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

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